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Asarco

**ENFORCEMENT
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	§	Case No. 05-21207
ASARCO LLC, et al.,	§	Chapter 11
Debtors.	§	Jointly Administered

**MOTION FOR ORDER AUTHORIZING ASARCO LLC
TO ENTER INTO A FOURTH CHANGE ORDER IN
CONNECTION WITH CONTRACT WITH ENVIROCON, INC.
FOR DEMOLITION WORK IN EAST HELENA, MONTANA**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY (20) DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREED OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE RICHARD S. SCHMIDT, UNITED STATES BANKRUPTCY JUDGE:

ASARCO LLC ("ASARCO" or the "Debtor") respectfully files this Motion for Order Authorizing ASARCO LLC to Enter into a Fourth Change Order in Connection with Contract with Envirocon, Inc. for Demolition Work in East Helena, Montana (the "Motion").

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PARTIES, JURISDICTION, AND VENUE

1. On April 11, 2005, several wholly owned subsidiaries (the "Asbestos Subsidiary Debtors"¹) of ASARCO LLC ("ASARCO") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court. On August 9, 2005, ASARCO filed its voluntary petition for relief in this Court. On August 26, 2005, Encycle, Inc. filed a voluntary petition for relief in this Court. On September 1, 2005, ASARCO Consulting, Inc. filed a voluntary petition for relief in this Court. On October 13, 2005, ten additional subsidiaries² filed voluntary petitions for relief in this court. This Motion will refer to all of the above-referenced cases collectively as the "Reorganization Cases."³

2. The Debtors remain in possession of their property and are operating their businesses as Debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors was appointed in the Asbestos Subsidiary Cases, and an official committee of unsecured creditors (the "Creditors' Committee") has also been appointed in ASARCO's case. No trustee or examiner has been appointed in any of the Reorganization Cases.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Court may hear and determine this Motion under the standing order of reference issued by the United States District Court for the Southern District of Texas under 28 U.S.C. § 157. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b). Venue of this

¹ The Asbestos Subsidiary Debtors consist of the following five entities: Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.); Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc. (f/k/a/ Cement Asbestos Products Company); and Cement Asbestos Products Company.

² The ten entities that filed on October 13, 2005 are: ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; AR Sacaton, LLC, an Arizona limited liability company; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; and Salero Ranch, Unit III, Community Association, Inc.

³ Encycle/Texas, Inc., an affiliated debtor whose case is pending under chapter 7, is not included within the definition of Reorganization Cases, and nothing in this Motion is intended to apply to Encycle/Texas, Inc.

proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 363 of the Bankruptcy Code.

RELIEF REQUESTED

4. The Debtor seeks authorization pursuant to section 363(b)(1) of the Bankruptcy Code to enter into a fourth change order in connection with its contract with Envirocon, Inc. ("Envirocon") for the demolition work at the East Helena, Montana lead smelter plant.

BRIEF BACKGROUND

5. ASARCO has operated a lead smelter plant in East Helena, Montana since 1888, and continues to own the plant. Prior to its bankruptcy filing, ASARCO entered into Consent Decrees with the Environmental Protection Agency (the "EPA") and the Montana Department of Environmental Quality that require it to clean up the East Helena facility. Rather than merely cleaning up the site, ASARCO discovered that it was easier and more efficient to demolish the facilities. Therefore, pursuant to the Consent Decrees, ASARCO must demolish two large areas within the smelter complex.

6. The Phase 2 demolition area includes the Drossing Plant, Bullion Casting, Speiss Granulation Pit, MCC building, part of the run-off water containment tank, and Lab building. The Phase 3 demolition area includes the mist precipitation building, clarifier building, Acid Tank, Dust Bin building, Scrubber Tower, Cottrell and Baghouse. Demolition will include all activities necessary to safely demolish all buildings and components within the project, clean and recycle all recyclable materials, properly dispose of all non-hazardous and hazardous materials (including but not limited to asbestos-containing materials and transformers with PCBs), and grade and cap all exposed soil areas within the demolition areas.

7. ASARCO lacks the manpower and other resources to do the demolition work itself; therefore, it concluded that the only viable method for completing the demolition work in accordance with the Consent Decrees' requirements was to hire a contractor.

8. ASARCO submitted an Invitation to Bid to seven entities, whereby it sought bids for the demolition work. By order entered on July 10, 2006, the Court permitted ASARCO, in consultation with the Creditors' Committee, to select the best and lowest bid and enter into a contract with that bidder.

9. The best and lowest bid, as determined by ASARCO in consultation with the Creditors' Committee, was that submitted by Envirocon. Consequently, ASARCO entered into the Construction or Repairs Contract for Phase 2 and Phase 3 Demolition (the "Contract") with Envirocon on July 27, 2006.

10. Article 26 of the Contract permits ASARCO to order extra work or initiate changes in the work to be done by Envirocon under the Contract by altering, adding to or deducting from the work; however, extra work involving the demolition of facilities and salvage beyond the scope of work shall be conducted only with the approval of the Court.

11. ASARCO has requested that Envirocon perform the following extra work, and has submitted Change Order Directive #4 (the "Change Order"). The Change Order, a true and correct copy of which is attached hereto as Exhibit A, calls for Envirocon to provide the following additional liner work:

- (a) installation of seals (boots) around sample wells and power poles extending through the liners;

(b) additional liner for liner boundaries in order to provide at least a 2 to 4 foot extension of the liner past the footings and foundations to ensure that the demolition area is properly covered; and

(c) additional liner for corner rounding, which is needed because the sharp corners originally provided for in the liner specifications were not sufficient to ensure proper drainage.

Envirocon has agreed to perform the work set forth in the Change Order for an additional \$17,251.81, which ASARCO believes is a reasonable price, given the work involved. Envirocon is currently on-site performing similar work, and can therefore undertake this project on a cost-efficient basis.

LAW AND ARGUMENT

12. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession, after notice and a hearing, to use, sell or lease property of the estate other than in the ordinary course of its business.

13. In the exercise of its business judgment, ASARCO seeks authority to enter into the Change Order with Envirocon in connection with the Contract for the demolition of the smelter, which will permit Envirocon to perform some additional capping work relating to the demolition project. Entry into the Change Order is required by the EPA to complete the demolition work, is in the interests of public health and safety, and is in the best interests of ASARCO's estate.

CERTIFICATE OF SERVICE

14. In compliance with Bankruptcy Local Rule 9013(f) and contemporaneously with this pleading, the Debtor has filed as a separate document a Certificate of Service containing the

names and addresses of the parties served, the manner of service, the name and address of the server, and the date of service.

WHEREFORE, ASARCO respectfully requests that the Court enter an order granting the Motion and granting such other and further relief as is just and proper.

Dated: January __, 2007

Respectfully submitted,

BAKER BOTTS L.L.P.

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**COUNSEL TO DEBTORS AND DEBTORS-IN-
POSSESSION**

EXHIBIT A

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CHANGE ORDER DIRECTIVE FORM (CODF)

PROJECT: Phase 2 & Phase 3 Demolition

CONTRACTOR: Envirocon

DIRECTIVE NO. 04

DATE: 01-15-07

You are directed to make the following changes in this Contract:
SCOPE OF WORK – PHASE 2 & 3
Add the following under General Provisions – paragraph A:
3.1 Additional 'boot' fabrication to Geo-membrane to Phases 2 & 3.

Not valid until signed by the Owner.
Signature of the Contractor indicates agreement herewith, including any adjustment in the Contract Sum or the Contract Time.

The Contract Price was.....\$159,636.00

Net change as a result of previously authorized Change Order..... \$233,078.00

The Contract Price Prior to this Change Order was.....\$233,078.00

The Contract Price will be increased by this Change Directive
(Please itemize change order price consistent with
Attached instructions and attach Change Order Form and related
documentation).....\$17,251.81

The new Contract Price including this Change Order
will be.....\$250,329.81

The Contract Time will be unchanged. (0) Days

The Date of Substantial Completion as of this date of the Change Order therefore is: February 28, 2007

Agreed To by:
Envirocon Inc.
CONTRACTOR

101, International Way, Missoula, MT 59808
ADDRESS

AUTHORIZED REPRESENTATIVE

DATE

Authorized by:
ASARCO LLC
OWNER

1150 N. 7th Avenue, Tucson, AZ 85705
ADDRESS

AUTHORIZED REPRESENTATIVE

DATE

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CHANGE ORDER PROPOSAL

The Owner may initiate a change to the Contract at the request of the Contractor or on its own initiative by issuing a Change Order Directive Form. In response to the Change Order Directive Form, the Contractor shall submit the attached Change Order Proposal Form completed consistent with the instructions set forth below. Unless otherwise directed by the Owner, the Contractor's Change order Proposal shall include or address pricing of the change as follows:

- a) The Contractor's direct labor cost to perform the changed work. This amount shall be composed of the Contractor's payroll costs to perform the changed work including social security, unemployment and workmen's compensation insurance;
- b) The Contractor's direct cost to purchase materials, supplies and equipment to perform the changed work provided such items are incorporated into the work or consumed in the process of performing the work; and
- c) The Contractor's rental cost to operate the machinery or equipment actually used to perform the changed work. This rental cost shall be based upon the amount of time required to perform the change, including the time to transport said equipment. Contractor's rental costs shall be priced on the basis of actual rental costs unless such costs exceed the Associated General Contractor's ("AGC") published rates; in such case, AGC's rates shall apply.
- d) Once the total labor, material and equipment costs is determined (the total for a, b, and c above), the Contractor is entitled to a markup of 57.5% for overhead and 57.5% for profit on those direct costs.
- e) For each subcontractor or sub-subcontractor that performs changed work, the subcontractor or sub-subcontractor shall be required to price its changed work consistent with paragraphs a, b, c, and d above and the contractor shall be entitled to a combined total markup for overhead and profit of 57.5% on the subcontractor's or the sub-subcontractor's work.
- f) As part of the Change Order Proposal Form, the Contractor shall include, if appropriate, a request for an extension of the contract performance period.

CONTRACTOR CHANGE ORDER PROPOSAL FORM

PROJECT: Phase Two & Three Demolition Project

FROM CONTRACTOR: ENVIROCON Inc.

CHANGE PROPOSAL NO.: 004

DATE: 01/16/07

IN RESPONSE TO DIRECTIVE NO. (IF APPLICABLE):

The Contractor proposes the following the costs to perform the above-referenced change:

1. Labor: Contractor will use the following workforce to perform the changed work (attached additional sheets if necessary)

<u>labor class</u>	<u>rate</u>	<u>hours</u>	<u>cost</u>
<u>6 laborer</u>	<u>\$40.83</u>	<u>40</u>	<u>\$ 9,800</u>
<u> </u>	<u>\$</u>	<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>	<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>	<u> </u>	<u>\$</u>
Subtotal			<u>\$9,800</u>

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2. Materials, supplies and equipment:

Contractor will use the following materials, supplies and equipment which will be consumed in or incorporated into changed work (attach additional sheets if necessary)

<u>description of item</u>	<u>quantity</u>	<u>unit price</u>	<u>cost</u>
20 mil liner and Geofabric	5,000sf	0.62	\$ 3,100
			\$
			\$
Subtotal			\$ 3,100

3. Equipment rentals:

To perform the changed work, Contractor will use the following equipment (attach additional sheets if necessary) attached hereto:

<u>equipment item</u>	<u>rental rate</u>	<u>period¹</u>	<u>cost</u>
Mobilization to site			\$ 567.50
			\$
			\$
			\$
Subtotal			\$ 567.50

- | | | |
|----|---|---------------------|
| 4. | Total of Contractor's direct costs (Items 1, 2 and 3) | <u>\$ 15,967.50</u> |
| 5. | Overhead (57.5% of item 4) | <u>\$1,197.50</u> |
| 6. | Profit (57.5% of item 4)
<u>\$89.81</u> | |
| 7. | Total cost to Contractor of changed work
(item 4 + 5 + 6) | <u>\$17,254.81</u> |
| 8. | Subcontractor or sub-subcontractor costs ² | <u>\$0</u> |
| 9. | Profit and overhead on subcontractor or sub-contractor costs plus markups (57.5% of item 8) | <u>\$0</u> |

¹ Depending on the scope of the change, the period could be in hours, days, weeks or months.

² To be priced consistent with instructions.

10.	Total subcontractor or sub-subcontractor costs Plus markups (item 8 + 9)	<u>\$0</u>
11.	Total proposed cost (item 7 + 10)	<u>\$17,254.81</u>

I certify that this proposal is accurate and correct to the best of my knowledge and belief.

Authorized Representative of
Contractor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

**ORDER AUTHORIZING ASARCO LLC TO ENTER INTO A FOURTH
CHANGE ORDER IN CONNECTION WITH CONTRACT WITH
ENVIROCON, INC. FOR DEMOLITION WORK IN EAST HELENA, MONTANA**

Upon consideration of the Motion for Order Authorizing ASARCO LLC to Enter into a Fourth Change Order in Connection with the Contract with Envirocon, Inc. for Demolition Work in East Helena, Montana (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that ASARCO is authorized to enter into Change Order Directive #4 for additional liner work in connection with the Construction or Repairs Contract for Phase 2 and Phase 3 Demolition with Envirocon, Inc., as described in the Motion; it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

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